**HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1673 OF 2007.

Oriental Bank of Commerce. ..Appellant.

Versus.

1. Municipal Corporation of Greater Mumbai.

2. Dr. Kirti Kumar Mangaldas Shah.

3. The Honorary Secretary, The New Vasundhara Co-op. Housing Society Ltd. ..Respondents.

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Mr. Girish S. Godbole i/b Bejai and Co., for the appellants.

Mr. J. J. Xavier for the respondents.

**CORAM: A.S.OKA, J.**

**DATE: DECEMBER 7, 2007.**

**ORAL JUDGMENT.**

1. Submissions of the learned counsel appearing for the parties were heard on the last date. The appellant - Oriental Bank of Commerce is the original plaintiff. The appellant filed a suit for challenging the action initiated by the 1st respondent- Corporation of demolition in exercise of power under section 351 of the Mumbai Municipal Corporation Act, 1888 (for short, "the said Act"). The suit filed by the appellant has been dismissed by the trial Court. The decree of the trial Court is the subject matter of challenge in this

appeal.

2. According to the case of the appellant - plaintiff, the premises bearing Unit No.3 admeasuring 716 square feet of carpet area on the ground floor of the building know as "Vasundhara Apartments" together with the open space in front of the said unit and terrace thereon were acquired by the plaintiff under an agreement of sale dated 23rd January 1999 executed by the 2nd respondent. A deed of confirmation dated 11th June 1999 confirming the execution of the said agreement was duly registered under the provisions of the Indian Registration Act, 1908.

3. The plaintiff received notice dated 3rd January 2003 from the 1st respondent -Corporation under section 351 of the said Act alleging that the appellant has carried out an extension to the existing premises admeasuring 21-feet 10-inches X 4-feet 2-inches X 10-feet by using brick masonry wall and ladi coba slab. A reply was submitted by the appellant on 8th January 2003 to the said notice. By order dated 28th March 2003 the Assistant Commissioner of the 1st Respondent recorded that the appellant could not establish that the offending construction was an authorised construction. Therefore a direction was issued to demolish the said structure. Thereafter by letter dated 14th October

2003, the appellant requested the 1st respondent to regularise the offending structure. The prayer made in the suit is for perpetual injunction restraining the 1st respondent from taking action of demolition.

4. The suit was contested by the 1st respondent - Corporation by filing a written statement. Apart from contending that the suit was not maintainable for want of notice under section 527 of the said Act, the 1st Respondent contended that the offending structure was completely unauthorised. The 2nd respondent did not contest the suit. The 3rd respondent supported the 1st respondent.

5. By the impugned judgment and decree, the trial Court dismissed the suit by holding that the appellant - plaintiff has failed to prove the authorisation of the structure. Learned Judge held that the suit was not maintainable for want of notice under section 527 of the said Act.

6. The submissions of the learned counsel appearing for the appellant is that the learned trial Court has committed an error by holding that the suit was not maintainable on account of want of statutory notice. He submitted that it was obvious that the appellant - Bank had not made any construction and they

have acquired the entire unit no.3 by a registered document from the lawful owner of the structure. He submitted that in any case when an application for regularisation dated 14th October 2003 was pending with the 1st respondent - Corporation, the said Corporation ought not to have made any attempt to enforce the order of demolition.

7. Learned counsel for the respondent no.1 submitted that there is no evidence led by the appellant to show that the structure is authorised. He submitted that the proposal for regularisation dated 14th October 2003 is not in proper form, and therefore the same cannot be considered.

8. I have given careful consideration to the submissions made by the learned counsel appearing for the parties. In the plaint the appellant has not relied upon any specific permission granted by the 1st respondent to show that the offending structure was permitted to be constructed by the 1st respondent. To the agreement of sale on which reliance is placed by the appellant, a sketch of the premises has been annexed, however a true copy of the sanctioned plan is not annexed to the agreement. The appellant did not make any effort to get the sanctioned plan of the building produced before the trial Court. Even in reply dated

8th January 2003 sent by the appellant to the notice under section 351 of the said Act, the appellant sought time of two months to produce the original documents. The order of demolition has been passed two months thereafter on 28th March 2003. In the said order of demolition, it is stated that the offending structure is constructed on the compulsory open space of the building and in any case, no authorisation has been produced by the appellants. It is stated that there was no evidence to show that the structure was in existence before the datum line.

9. It will be necessary to refer to the letter dated 14th October 2003 sent by the appellant to the 1st respondent which is annexed to the plaint. In the said letter, a clear statement has been made by the appellant that the appellant intends to get the structure regularised by paying reasonable charges. The appellant sought guidance from the 1st respondent for obtaining the additional FSI to the extent of 90 square feet. The learned trial Judge has relied upon the said letter and has come to the conclusion that the appellant has virtually accepted that there is no authorisation for the offending structure.

10. Considering the aforesaid factual position it is very difficult to find fault with the finding of the

learned trial Judge that the appellant has not proved the authorisation for the offending structure. Therefore, there is no merit inthe appeal.

11. The appellant is a Government of India Undertaking and is a nationalised bank. The appellant has acquired Unit - 3 along with the offending structure from its earlier owner. The appellant bank is running a branch in the said unit no.3. In order dated 8th August 2007 passed by this Court, a statement of the learned counsel for the appellant is recorded that the appellant is moving for regularisation of the offending structure to the concerned authorities. Though there is no merit in the first appeal, sufficiently long time deserves to be granted to the appellant to remove the offending structure. In the meanwhile, the appellant can apply for the regularisation of the structure in accordance with law.

12. Hence I pass the following order.

(a) Appeal is hereby dismissed with no order as to costs.

(b) Notwithstanding the dismissal of the Appeal, action for demolition shall not be taken against the offending structure by the 1st

respondent - Corporation till 30th November 2008. In the meanwhile, it will be open for the appellant to take appropriate steps by applying for regularisation. If application for regularisation is made by the appellant, the same shall be decided expeditiously by the concerned authorities, and in any event within a period of 12 weeks from the date of receipt of the application.

(c) If the offending structure is not regularised till 30th November 2008, it will be open for the 1st respondent to take action of demolition against the offending structure.

**(A.S.OKA, J.)**